

COMMISSIONERS APPROVAL

CHILCOTT *gc*

LUND *SL*

THOMPSON

TAYLOR (Clerk and Recorder)

Date.....August 23, 2006

Members Present.....Commissioner Greg Chilcott, Commissioner Betty Lund and Commissioner Alan Thompson

Minutes: Glenda Wiles

The day was spent in office management.

The Board met for the second public meeting on the Aspen Springs Subdivision.
Minutes of that meeting are as follows:

**Ravalli County Board of County Commissioners
Meeting Minutes for August 23, 2006
6:00 p.m.**

**Judge Langton's Courtroom, Ravalli County Courthouse, 205 Bedford St.,
Hamilton, Montana**

Continuation of Public Meeting
Aspen Springs (Wesmont Builders/Developers, Inc.) Major Subdivision and Eight
Variance Requests

1. Call to order

Commissioner Chilcott called the meeting to order at 6:02 p.m.

(A) BCC

Greg Chilcott (Present)
Betty Lund (Present)
Alan Thompson (Present)

(B) Staff

Jennifer De Groot
Benjamin Howell
Karen Hughes

James McCubbin
Renee Van Hoven

Commissioner Chilcott led the audience in the Pledge of Allegiance.

2. Review of New Information Presented at the Public Meeting on August 22nd

(A) Staff Report on the New Information

Renee Van Hoven explained what Staff considered new information not submitted or considered during the public hearing before the Planning Board. She noted that Staff recommends that the County Commissioners review the comments and decide a subsequent public hearing is required for the new information. (See Attachment A, Staff Memorandum Re: New Information on Aspen Springs)

Commissioner Chilcott asked the Board if there were any other relevant and credible pieces of new information that were not mentioned. The Board said there were not.

James said that the memorandum is Staff's take on what is new information and whether it is relevant or credible. He noted that he was involved in the analysis and agrees with the memorandum. He explained that the Board needs to determine if the items are new information, if they are relevant in consideration of the subdivision proposal in light of the review criteria, and whether the information is credible; if all are true, that information has to go back to the Planning Board for a subsequent public hearing, which will be limited to discussion and comments on the new information. He recommended that the Board accept public comment on whether there is new information and whether it is relevant and credible, but not on the subdivision itself.

Commissioner Chilcott reiterated the items which could be discussed as possible new information and asked the public for their comments.

(B) Public Comment on the New Information

Chris Linkenhoker said that he mentioned the relevancy of NEPA the previous night and that information was not included as part of the new information.

Commissioner Chilcott noted that NEPA is triggered by federal funding.

James explained that the comments were more argument than information and were not relevant to determination under state law. He noted he thought the issue is out of the Board's jurisdiction, but that it is fair for the Board to make that analysis.

Chris Linkenhoker noted that he has an associate who is a retired NEPA coordinator who could help solve the question if the subdivision will trigger NEPA. He restated that the argument is relevant and that the County has an issue with payments in lieu of taxes and some portions of its budget comes from federal funds. He noted that does not mean the project cannot proceed without an environmental impact statement, but said that the issue should be reviewed for significance.

Nick Kaufman from WGM Group asked where the school data came from and when it was received by Staff.

Renee said that the report was written on August 8, 2006, and submitted to the Planning Department last Wednesday, August 16, 2006.

Commissioner Chilcott noted that the report was referred to the previous night by John McGee.

John Tabaracci noted that the statute requires three tests to see if the information is new: it must be new information, credible, and relevant. He testified that the test well information was not new information because it simply confirmed earlier projections made at Planning Board hearings by Cam Stringer and Ryan Salisbury. He also questioned its relevancy because determinations on water and sewer will be made by the DNRC and DEQ. He said that the email from David Ohnstad to Ryan Salisbury confirms a position given by David Ohnstad in a previous email dated June 26, 2006. He argued that the traffic statistics given were not new information because multiple people testified on traffic safety issues. He said he agrees with Staff's analysis that comments about drug usage are not relevant to this subdivision. He said that neither the demographic data from the TischerBise study nor the comments by Christa Burns are new information because everyone knows the Florence-Carlton Schools are overcrowded. He said that the information is not relevant because both the study and Burns' comments were about improving capital facilities at the school and the County cannot assess money for capital facilities. He concurred with James that NEPA is outside the Board's jurisdiction.

Candace Jerke said that the comments from Christa Burns came from information the Florence-Carlton School came up with when they had a team look at what to charge for impact fees. She said that the developer's offer for \$2,000 for a traffic study at US Highway 93 and Eastside Highway was new to her and might be new information to the Board.

Sarah McMillan said she represents the Florence Coalition Against Aspen Springs and Bitterrooters for Planning and that last night, the developers submitted new information. She argued that the process is flawed.

Commissioner Chilcott noted that the Board is not considering the process at this time.

Sarah McMillan said that the developer should have to amend his application and that the public was not aware that they could speak at the second County Commissioner meeting.

Commissioner Chilcott asked Ms. McMillan to stick to the topic of new information and noted that the paper and the Commissioner's schedule advertised this meeting as a public meeting.

John Tabaracci noted that on July 12, 2006, his office wrote a letter to the Planning Board with an offer to pay \$2,000 toward a traffic study.

Matt Taylor said he works at the University of Montana's School of Education and does a number of grant projects and has a background in school safety and emergency management. He noted he also serves as a consultant for the US Department of Education. He said he cannot confirm earlier comments about the density of the Florence-Carlton School District, but noted that when he did on-site safety and vulnerability assessments of all schools in Ravalli County in the last two years and other schools in the west, the Florence-Carlton School District appeared to be one of the most densely populated schools. He noted that overcrowding has effects on student behavior and safety.

Steve Hall said that he spoke with John McGee, who told him that through their study, they found out that the density of the Florence-Carlton School has the greatest density of any school that size per square foot. He noted that the source is credible because it came from John McGee.

Kevin Burns said that Item 6 was determined by Staff to be irrelevant because it deals with impact fees and capital expansion. He said that the Drug Abuse Report coupled with school overcrowding creates a public health and safety issue. He said that the information is new, is credible and can be confirmed by OPI, and is relevant. He argued that overcrowding could lead to drug abuse, the Sheriff's Department has a slow response time to the area, and hazardous road conditions exist.

Phil Taylor said that some of the public have not seen the submitted information and asked in the event there is new evidence, if it could go back to the Planning Board for public comment on the new information.

James said that if the information meets all three criteria, there will be a new hearing on those items; if the items are not deemed new, credible, and relevant information, the Board can make a decision.

Chris Linkenhoker said he tried to reach Earl by phone but was unsuccessful. He said he respectfully disagrees with the ruling and directed legal staff to a book entitled Environmental Law by Mandelker. He noted that since 1968, there have been numerous cases involving use of federal funds and the trigger that brings in NEPA. He mentioned the conclusion of these cases can be found in an article titled "Small Federal Handle Issues." He said that this is of major significance to this decision. He noted that his associate's opinion is that the threshold is quite low based on numerous court cases.

Pam Merwyn asked if anyone addressed impacts to air quality.

Renee noted it was brought up in previous hearings.

(C) Board Deliberation on the New Information

(i) Board discussion on the new information

1. Test well statistics submitted during the applicant's presentation at the BCC Meeting on August 22, 2006.

Commissioner Thompson said that when considering any subdivision on the east side of the valley, the Board needs to be conscious of the water table. He noted that until the previous night, he was not aware of drawdown tests and noted that his notes from the meeting conflicted with the slides provided by Cam Stringer. He said that with the addition of a second set of information, he does not know which to believe. He said the information appears to be credible and relevant and the public should have the right to comment on it. He said he was not happy that this information is new because he wanted the subdivision to be decided on quickly; he noted that both the Planning Board and Staff have devoted much time to this subdivision.

Commissioner Lund asked to see the Attorney General's opinion. She noted that although she is not an attorney, she believed that the Sanitarian had already reviewed the water application for compliance.

James noted that a paragraph in the opinion said that the County cannot wait until final plat to review the water supply.

Theresa Blazicevich said that Senate Bill 290 passed in 2005 makes that Attorney General's opinion void.

James said he agreed, but the statutory change did not come into effect until October 2005, so the County has to apply the law in

place at the time the subdivision was submitted. He noted that even if the Senate Bill did apply, the information would still be relevant and could be passed on to DNRC and DEQ so the public would have time to comment on that information.

Commissioner Chilcott asked why the developer would take time to present information the previous night if it was not relevant. He noted that the developer agreed to limit the presentation to relevant data and that fact suggests its relevance. He stated that the information is credible, although after he discussed the matter with the Environmental Health Director, its credibility may be limited due to the short duration of the test. He concluded that the information was valid and accurate, and its relevancy was demonstrated by last night's presentation.

The Commissioners unanimously agreed that the information was new, credible, and relevant.

2. An email between David Ohnstad, Ravalli County Road Superintendent and Ryan Salisbury, WGM Group, Inc. dated August 17, 2006.

Commissioner Lund noted that John Tabaracci said this information had already been hashed over in an email dated June 26, 2006. She noted this information is confirmation of previously submitted information.

Commissioner Thompson said he believes the information is credible, but he is not sure if it is relevant because he already knew much of what had been said between WGM's engineers and David Ohnstad. He said he assumes the Planning Board had this same information.

Commissioner Chilcott said he does not remember seeing the information previously, but noted that the Board has had to wade through a mountain of paperwork.

Renee said Staff did receive that email dated June 26, 2006, but there was additional information in the newest email attached to John Tabaracci's letter. That information included an allowance to improve Mountain View Drive at a later phase and noted when the emergency access would be triggered due to the level of service.

Commissioner Lund said she has read the letter on June 21, 2006, but has not had time to compare them. She said that there is

enough previous information that she feels the latest email is duplicated and the information is not new.

Commissioner Thompson said that there was much to read in a short time and they have hashed over the emergency exit variance multiple times. He noted that Renee is referring to a section in the email where the level of service on Lower Woodchuck Road is changed and the emergency access needs to be built. He said he was not sure he had read that particular item before.

Ryan Salisbury noted that Staff requested an emergency connection in Phase I, but the application had always listed its creation in Phase 21. He noted this is an ongoing issue and the Road Superintendent weighed in on the connection. He explained that the developers have been working on this issue from day one and he is concerned about how to proceed if the answer is not sorted out in the subdivision process.

Commissioner Chilcott said he would rather err on the side of caution. He said that the Board has already determined one new, relevant and credible issue and said he was leaning toward the cautious and conservative approach because he cannot remember all that he read. He said he considers it to be new information.

Commissioner Thompson said he has no problem with that interpretation if that is the situation.

Commissioner Lund said she yields to the Chairman and to caution. She also said they have hashed the issue and mentioned Ryan said the Board has not yet come up with an answer.

Commissioner Chilcott said he does not think the issue is new, but the date of the email is indicative that it might possibly be new.

The Commissioners unanimously agreed that the information was new, credible, and relevant.

3. Traffic statistics submitted by Cheryl Harkin at the BCC Meeting on August 22, 2006.

Commissioner Chilcott said that Staff noted its credibility because the statistics came from MDT.

James noted there was oral testimony as well.

Commissioner Lund noted that Ms. Harkin did not include a hard copy of the source in her letter.

Karen said it was a judgment call because Staff does not have the actual source or statistics from MDT.

Commissioner Thompson said he agreed with John Tabaracci that various people spoke about problems on the highway, but he never saw any definitive percentages or numbers until the previous night. He said the statistic that accidents on Eastside Highway increased 171% over the last 15 years is relevant because some of the main sticking points of the subdivision are public health and safety, air quality, and traffic on the roads. He noted that until the Board receives the statistics from MDT, the information is not credible; if or when they do, the information would be relevant and credible.

Commissioner Lund agreed that if a hard copy from MDT was presented, it would be relevant.

Commissioner Chilcott said he hates to challenge the credibility of any citizen, but for future precedence, if someone presents data from a government entity, an agency, or some source, it is prudent to have that information provided with the testimony. He noted that in future subdivisions, someone could say a fact that could send that subdivision back to the Planning Board and everyone will have to endure endless meetings and the costs of those meetings.

The Board agreed that the information is new, but the credibility of the statement cannot be ascertained without hard facts.

Commissioner Thompson said that the Board needs documentation to back up the statement.

Commissioner Chilcott asked James for any comments.

James said that the decision is well within the Board's discretion.

4. Information from the National Institute on Drug Abuse Report dated August 21, 2006 verbally submitted by Allison Kinney at the BCC Meeting on August 22, 2006.

Commissioner Chilcott said that the discussion the Board just had on Item 3 applies to Item 4 as well. He said that although the information appears credible, there is no evidence for it.

Commissioner Lund noted that although the statistic is tragic, it is not relevant because it had nothing to do with subdivisions.

Commissioner Thompson said that although he finds the information credible, he is uncomfortable correlating alcohol and drug abuse with subdivisions; therefore, he found it irrelevant.

The Commissioners unanimously concurred with Staff's recommendation that the information appears to be credible, but is not relevant.

5. Demographic Data within the Draft of Impact Fees to Fund Growth-Related Capital Improvements for the Florence-Carlton School District by TischlerBise dated August 8, 2006.

Commissioner Thompson said that Items 5 and 6 can be condensed into one discussion. He noted that Tischler was hired by the County to look at the feasibility of impact fees and school districts were offered the chance to follow-up on the issue. He noted that the TischlerBise study is credible. He said that the study shows the normal growth of the School District without specifically mentioning Aspen Springs. He said the report data shows an increase in enrollment up through 2012 and the figures are different from the ones that the developer provided. He concluded that the data is relevant and should be considered.

Commissioner Lund said she agrees with Commissioner Thompson, but noted the Board cannot judge a subdivision based on capital improvements. She said that the only new information is about student growth, but that has been discussed many times. She said that the report deals with construction of a new school and she is not sure the Board can consider that when deliberating on a subdivision.

Commissioner Chilcott said that the study seems like a capital consideration and under the regulations, cannot be considered. He noted that operation and maintenance costs can be considered.

James said that Montana law allows the Board to consider and require payment on a number of categories, but not for capital expansion for educational facilities. He noted that impact fees only deal only with capital facilities for education. He noted that the question is not about the conclusion of the report, but if some of the data is relevant to the subdivision.

Commissioner Chilcott asked if it was submitted through this process or referred to only during testimony.

James noted it was referred to the previous night by John McGee with the understanding that the Board received it as part of the information on the subdivision.

Commissioner Chilcott said that the TischlerBise report is credible, and new as of August 8, 2006, although the Board did not receive it until August 18, 2006. He noted that the Board is referring to the raw data in the report, not the conclusion.

James confirmed that the conclusion and purpose of the study is irrelevant, but the question is whether information within the study is relevant.

Commissioner Thompson stated that the information is relevant.

Commissioner Lund disagreed.

Commissioner Chilcott said the information was relevant.

The Board voted (2-1) that the demographic data in the report was new, relevant, and credible, and should be sent back to the Planning Board.

6. Statement at the BCC Meeting on August 22, 2006 by Christa Burns that the Florence-Carlton School District has the most students per square foot in the state.

Commissioner Chilcott noted that the statistic was new, but it is common knowledge that the School District is overcrowded and no one has argued that conclusion. He said he did not believe it is significant enough to be considered new information.

Commissioner Thompson said that Item 6 can be rolled in with Item 5 because the TischlerBise study discusses the amount of square feet available per school per student. He noted that Ms. Burns did not provide evidence for her comments, but the TischerBise report has that information and the Board could get OPI to find out the normal amount of square feet. He noted that if the Board gives the TischerBise report to the Planning Board, they do not need to find the credibility of Ms. Burns or discuss capital facilities, which are not relevant.

Commissioner Lund noted that Ms. Burns' comment still referred to the number of students per square foot in the state, not just the number of students. She said the Board does not need to pass this information back to the Planning Board.

Commissioner Chilcott noted that there has been other testimony that the Florence-Carlton Schools are overcrowded, but asked if the new information was that the school was the most densely populated.

James noted that the new information is that the School District is the most crowded in the state, not solely that it is crowded. He asked if it makes a difference to the Board if this School District is more crowded than those in other counties. He said that there is not much guidance on this new law, and the law does not state the new information has to be "significant."

Commissioner Chilcott said he again would like to err on the side of caution and send it back, although it is not relevant.

Commissioner Lund noted that Ms. Burns did not submit documentation with her statement and therefore, there is no proof it is true. She stated that the information is not new.

Commissioner Thompson said that the information is included in the TischlerBise report and once it is sent back to the Planning Board, the issue is taken care of. He noted that the information is not relevant or credible.

Commissioner Chilcott concurred that Item 6 may be new information, but was not relevant or credible.

7. Comment by Chris Linkenhoker on August 22, 2006, that the subdivision will trigger NEPA.

James noted that the comment was more in the form of an argument than information. He said it is not new information and is not relevant because he disagrees with the conclusion. He noted that he has not read the aforementioned book, but he does not see the connection between this proposed subdivision and NEPA.

Commissioner Lund said she defers to the County Attorney.

Commissioner Thompson said he did not understand how NEPA would apply or how the County would use federal funds to benefit this particular subdivision. He noted that the County does receive

various federal funding, including PILT, a stabilization fund, and grants, but PILT is discretionary, the stabilization funds are for education and roads, and grant money must be specifically spent. He said he did not know how this information is relevant unless NEPA is somehow triggered.

Commissioner Chilcott said he did not see a nexus with NEPA in funding or with a private subdivision. He concluded that it is an argument, but it is not relevant.

James noted that the County does have subdivision fees that are designed to cover the approximate cost of processing subdivisions. He explained that those fees may or may not be accurate in covering costs.

Commissioner Chilcott concluded for the Board that Item 7 is not relevant.

8. The developer's offer to pay \$2,000 toward a traffic study at the intersection of US Highway 93 and Eastside Highway.

Commissioner Chilcott read from the July 12, 2006, letter from John Tabaracci, in which Wesmont expressed willingness to pay about \$88,000 for the roundabout and \$2,000 to MDT for a traffic study. He concluded that the information is not new.

Commissioner Lund agreed.

Commissioner Chilcott stated that Item 8 was not new information.

- (ii) Board action on the new information

Commissioner Thompson motioned to remand the Aspen Springs subdivision back to the Planning Board for consideration of the three specific areas of new information: data from test wells, the August 17th email from David Ohnstad to Ryan Salisbury, and the demographic data in the TischerBise report, for their consideration and public hearing.

Commissioner Lund seconded the motion.

The Board unanimously approved the motion.

James noted that under Montana Code Annotated, the Planning Board has 45 days from today to hold a hearing on that information and the 60-day time limit on the subdivision is suspended. He said that Staff

will pursue scheduling and noticing for the hearing. He said that after the Planning Board hearing, the County Commissioners will have about two weeks for their decision.

Commissioner Chilcott expressed that he had wanted to decide on the subdivision tonight and asked if the Board's deliberation on variance requests was suspended as well.

James said that was his recommendation. He noted that there was enough new information that it would be hard to separate it out to make sure the decision would not be based on it. He said that if the Board decided something that could be affected by public comment, they would be ignoring public comment. He suggested waiting on deliberations and noted that if the Board has one or more variances they feel confident will not be affected, they can go ahead, but that is not the conservative approach.

Commissioner Chilcott said that the phasing variance and funding could be tied with the TischlerBise study, but noted that the natural gas pipeline variance is separate.

Commissioner Lund agreed that the pipeline would not be affected. She asked if flag lots or the size of lots would be affected by the new information. She also noted that the internal road standards would not be affected, but the external road variance requests would be.

James said that the Board could go ahead with variances that were tied to a change in the regulations and the flag lot variance. He noted that the size of lots could be affected by demographics and that if there was any chance that the decision could be affected by new information, it should not be pursued this evening.

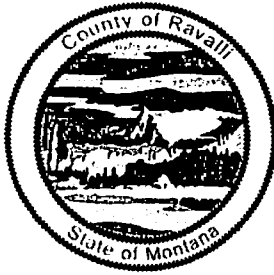
Commissioner Thompson said that he would like to collect all the information before making a decision. He said he was not comfortable making decisions on specific variances and then coming back to make more decisions later.

Commissioner Lund agreed and moved to adjourn the meeting until further notice.

Commissioner Chilcott seconded the motion.

3. Adjournment

The meeting was adjourned at 7:27 p.m.



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MEMORANDUM

OG-06-08-967

Date: August 23, 2006
To: Board of County Commissioners (BCC)
From: Renee Van Hoven, Senior Planner *W*
CC: Subdivision file, Outgoing Correspondence File, Wesmont Builders/Developers, Inc.,
Stanley C. and Ellen Hendricksen, Ryan Salisbury, John Tabaracci
Re: New Information on Aspen Springs

Staff has reviewed the public comments submitted after the public hearing for the Aspen Springs Subdivision and finds that some of the public comments constitute information under (2)(b) of Section 76-3-615, MCA, which is new information that has never been submitted or considered during a public hearing. Section 76-3-615(3) further states that the governing body shall determine if the new information is relevant and credible, which requires a subsequent public hearing. Staff recommends that the BCC review the public comment and make the determination that a subsequent hearing is required for those items the BCC determine to be new information which is relevant and credible.

Following is new information pursuant to MCA 76-3-615(2)(b), with staff recommendations on whether or not the information is relevant and credible:

1. Test well statistics submitted during the applicant's presentation at the BCC Meeting on August 22, 2006.
 - a. Credible - This information is credible because it was submitted by the developer's consulting engineers.
 - b. Relevant - This information is relevant based on an Attorney General Opinion Vol. 49, No. 7, 2001 that water supply must be reviewed during the preliminary plat review process.
2. An email between David Ohnstad, Ravalli County Road Superintendent and Ryan Salisbury, WGM Group, Inc. dated August 17, 2006.
 - a. Credible - This information is credible because it is from the Ravalli County Road Superintendent.
 - b. Relevant - This information is directly relevant to Variance Request #2, regarding a requirement for a road connection to Eight Mile Creek Road through the Riverview Orchards Subdivision.

3. Traffic statistics submitted by Cheryl Harkin at the BCC Meeting on August 22, 2006.
 - a. Credible - This information appears to be credible because it is from MDT.
 - b. Relevant - This information is relevant because it is regarding traffic safety, which impacts local services and public health and safety.
4. Information from the National Institute on Drug Abuse Report dated August 21, 2006 verbally submitted by Allison Kinney at the BCC Meeting on August 22, 2006.
 - a. Credible - This information appears to be credible information.
 - b. Not Relevant - This information does not appear to be relevant because it does not address the impacts of the subdivision on the review criteria in state law and the Ravalli County Subdivision Regulations.
5. Demographic data within the Draft of Impact Fees to Fund Growth-Related Capital Improvements for the Florence-Carlton School District by TischlerBise dated August 8, 2006.
 - a. Credible - This information is from a credible source.
 - b. Relevant - Demographic data within the report are relevant to assessment of the impacts of the subdivision on local services.
6. Statement at the BCC Meeting on August 22, 2006 by Christa Burns that the Florence-Carlton School District has the most students per square foot in the state.
 - a. Credible - It appears that the information is from a credible source.
 - b. Relevant - This information is relevant because it relates to the impacts of Aspen Springs on local services; however, this information primarily addresses capital facilities for education and state law limits the County's ability to assess and mitigate impacts of a subdivision on capital facilities for education.

SIGN-IN SHEET

Please write legibly.

DATE:

3/23/06

SUBDIVISION:

Aspen Springs

[illegible]